

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC. and NICE
SYSTEMS LTD,

Plaintiffs,

v.

WITNESS SYSTEMS, INC.

Defendant.

Civil Action No. 06-311

**DEFENDANT WITNESS SYSTEMS, INC.'S AMENDED PROPOSED FORM OF
SPECIAL JURY VERDICT**

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**ATTORNEYS FOR DEFENDANT
WITNESS SYSTEMS, INC.**

Dated: January 4, 2008

DEFENDANT'S AMENDED PROPOSED FORM OF SPECIAL JURY VERDICT

We, the jury in the above-titled action, find the following special verdict on the questions submitted to us:

FOR EACH OF THE SIX PATENTS, PLEASE ANSWER BOTH THE INFRINGEMENT AND INVALIDITY QUESTIONS:

THE '570 PATENT

- 1) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,249,570?

Claim 6 YES _____ NO _____

- 2) Do you find by clear and convincing evidence that U.S. Patent No. 6,249,570 is invalid?

Claim 6 YES _____ NO _____

- 3) If you found that Witness Systems infringed U.S. Patent No. 6,249,570, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 6 YES _____ NO _____

THE '345 PATENT

- 4) Do you find by a preponderance of the evidence that Witness Systems infringed the U.S. Patent No. 6,728,345?

Claim 14 YES _____ NO _____

Claim 48 YES _____ NO _____

- 5) Do you find by clear and convincing evidence that U.S. Patent No. 6,728,345 is invalid?

Claim 14 YES _____ NO _____

Claim 48 YES _____ NO _____

- 6) If you found that Witness Systems infringed U.S. Patent No. 6,728,345, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 14 YES _____ NO _____

Claim 48 YES _____ NO _____

THE '371 PATENT

- 7) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 5,396,371?

Claim 1 YES _____ NO _____

Claim 8 YES _____ NO _____

- 8) Do you find by clear and convincing evidence that U.S. Patent No. 5,396,371 is invalid?

Claim 1 YES _____ NO _____

Claim 8 YES _____ NO _____

- 9) If you found that Witness Systems infringed U.S. Patent No. 5,396,371, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1 YES _____ NO _____

Claim 8 YES _____ NO _____

THE '109 PATENT

- 10) Do you find by a preponderance of the evidence that Witness Systems infringed the U.S. Patent No. 7,010,109?

Claim 1 YES _____ NO _____

Claim 6 YES _____ NO _____

- 11) Do you find by clear and convincing evidence that U.S. Patent No. 7,010,109 is invalid?

Claim 1 YES _____ NO _____

Claim 6 YES _____ NO _____

- 12) If you found that Witness Systems infringed U.S. Patent No. 7,010,109, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1 YES _____ NO _____

Claim 6 YES _____ NO _____

THE '372 PATENT

13) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,775,372?

Claim 1 YES _____ NO _____

Claim 15 YES _____ NO _____

Claim 33 YES _____ NO _____

14) Do you find by clear and convincing evidence that U.S. Patent No. 6,775,372 is invalid?

Claim 1 YES _____ NO _____

Claim 15 YES _____ NO _____

Claim 33 YES _____ NO _____

15) If you found that Witness Systems infringed U.S. Patent No. 6,775,372, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1 YES _____ NO _____

Claim 15 YES _____ NO _____

Claim 33 YES _____ NO _____

THE '920 PATENT

16) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,870,920?

Claim 1 YES _____ NO _____

Claim 16 YES _____ NO _____

Claim 21 YES _____ NO _____

17) Do you find by clear and convincing evidence that U.S. Patent No. 6,870,920 is invalid?

Claim 1 YES _____ NO _____

Claim 16 YES _____ NO _____

Claim 21 YES _____ NO _____

18) If you found that Witness Systems infringed U.S. Patent No. 6,870,920, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1 YES _____ NO _____

Claim 16 YES _____ NO _____

Claim 21 YES _____ NO _____

PLEASE STOP HERE IF YOU HAVE FOUND *NONE* OF THE PATENTS ABOVE TO BE BOTH INFRINGED AND NOT INVALID

PLEASE CONTINUE IF YOU HAVE FOUND ONE OR MORE OF THE PATENTS ABOVE TO BE BOTH INFRINGED AND NOT INVALID

19) If you found that a claim of U.S. Patent No. 6,249,570 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ _____

20) If you found that a claim of U.S. Patent No. 6,728,345 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ _____

21) If you found that a claim of U.S. Patent No. 5,396,371 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ _____

22) If you found that a claim of U.S. Patent No. 7,010,109 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ _____

23) If you found that a claim of U.S. Patent No. 6,775,372 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ _____

24) If you found that a claim of U.S. Patent No. 6,870,920 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ _____

25) If you found that NICE is entitled to lost profits damages, what amount of lost profits do you award to NICE for infringement of that patent?

\$ _____

26) Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement, and prejudiced Witness Systems, such that the defense of laches applies?*

Yes ____ No ____

27) Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies?*

Yes ____ No ____

* Subject to Pending Motion *in Limine*.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2008, I electronically filed with the Clerk of Court the foregoing Defendant Witness System Inc.'s Amended Proposed Form of Special Jury Verdict using CM/ECF which will send electronic notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery.

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*Attorneys for Plaintiffs
Nice Systems Ltd. and Nice Systems, Inc.*

I also certify that on January 4, 2008, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:

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Nice Systems Ltd. and Nice Systems, Inc.*

/s/Kyle Wagner Compton
Kyle Wagner Compton